



# City of Seattle

## Ethics and Elections Commission

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March 7, 2006

R. Gil Kerlikowske  
Chief of Police  
Seattle Police Department  
610 Fifth Avenue  
P.O. Box 34986  
Seattle, WA 98124-4986

Re: Case No. 05-1-1118-1

Dear Chief Kerlikowske:

On October 31, 2005, you sent a letter to the Public Safety Civil Service Commission (PSCSC), with a copy to this Commission, regarding an alleged disclosure to the media concerning a PSCSC decision that had not yet been made public. You asked the PSCSC to conduct an investigation, stating that the release may have violated the City's Ethics Code.

By letter dated November 9, 2005, the PSCSC asked this Commission to investigate the alleged disclosure. We agreed to do so, making clear that our jurisdiction extended only to the issue whether the Ethics Code was violated, and if so, by whom.

Commission staff interviewed five individuals with intimate knowledge of the PSCSC proceeding: PSCSC Commissioners Herb Johnson, David Brown and Joel Nark; the PSCSC's Executive Director, Mary Effertz; and the PSCSC's attorney, Gary Keese. Commission staff also spoke with Sam Pailca, the Director of the Seattle Police Department's Office of Professional Accountability (OPA); Sergeant Richard O'Neill, president of the Seattle Police Officers' Guild (Guild); and Steve Militech, the *Seattle Times* reporter who allegedly received the "tip." Our investigation failed to yield evidence to support a charge that any individual violated the Ethics Code, and therefore I am dismissing your complaint.

### Facts

On September 21, 2005, the PSCSC heard a police officer's appeal of his thirty-day suspension. After taking evidence, the PSCSC Commissioners, their Executive Director, and their attorney went into executive session to deliberate. The PSCSC decided to reduce the suspension to five days, with PSCSC Chair Joel Nark dissenting on the grounds that he believed even a five-day suspension was excessive. The Commissioners tasked their attorney with drafting the opinion, and the meeting ended. The result was not announced in open session.



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On or about October 28, 2005, Steve Militech called the OPA Director and told her that he'd heard that the PSCSC would soon issue its opinion, and that the Guild had learned that they would like the result.

On November 8, 2005, the PSCSC released its opinion reducing the officer's suspension to five days, with a partial dissent from Chairman Nark.

Between November 7, 2005 and November 14, 2005, and again between December 5 and December 9, 2005, the City held an election for one of the three PSCSC positions. Sworn police and uniformed fire employees vote in the election; Commissioner Nark was re-elected.

The Commission staff interviewed Ms. Pailca, who confirmed that she had been contacted by Mr. Militech, and confirmed that he told her that he had heard that the Guild may have been notified that the PSCSC was on the verge of issuing its decision, and that the Guild would like the result. Ms. Pailca did not know who had revealed the information to Militech.

Staff contacted Mr. Militech. Mr. Militech advised that the account of his conversation with Ms. Pailca was accurate. Staff asked Mr. Militech the source of his information. Mr. Militech advised he would discuss the matter with the Seattle Times legal counsel and get back to the Commission staff. By return phone call, Mr. Militech stated that the newspaper's attorneys had advised him not to disclose the identity of his source.

Staff contacted Sergeant O'Neill, who represented the officer at the hearing, and is now the Guild's president. Sergeant O'Neill advised that rumors were circulating during and after the hearing, and that Mr. Militech was present in the corridor outside the closed hearing room. Sergeant O'Neill denied that he was informed of the results of the hearing, or the nature of the results, prior to the release of the written decision.

Staff interviewed the three PSCSC Commissioners, Ms. Effertz, Mr. Keese and a paralegal who assisted Mr. Keese when he was drafting the opinion. All of them denied being Mr. Militech's source, and all of them denied sharing information about the decision with the Guild. None of them had any knowledge that would have implicated one of the others in the alleged disclosure.

## **Conclusion**

After reviewing the investigation by the Commission staff, I have determined that there is insufficient evidence to charge any individual with violating the Ethics Code. Accordingly, by this letter I am dismissing your complaint. You are entitled to appeal this decision to the Commission under Seattle Ethics and Election Commission Administrative Rule 2.6.<sup>1</sup>

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<sup>1</sup> 2.6 Appeal of Executive Director Dismissal Decisions

(1) Upon the written request of a party aggrieved by an Executive Director's decision to dismiss a complaint, the decision may be reviewed by the Commission.

(2) A request for review shall be served at the office of the Commission no later than twenty one (21) days after the date of mailing the decision of which review is sought.

Thank you for bringing this matter to our attention.

Very truly yours,



Wayne Barnett  
Executive Director

cc: Mr. Joel Nark, Chair, Public Safety Civil Service Commission  
Seattle Ethics and Elections Commission

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- (2) A request for review shall be served at the office of the Commission no later than twenty one (21) days after the date of mailing the decision of which review is sought.
- (3) A request for review shall state the grounds therefore, and shall be no longer than twelve 8 1/2" x 11" double-spaced pages in length with margins of at least 1" on every side, and no more than twelve characters per inch.
- (4) When a request for review is served, enforcement of the decision of which reconsideration is sought shall be stayed and the decision shall not be final until the Commission has acted on the request for review.
- (5) The Commission shall act on the request at the next meeting at which it may be practicable by:
- (a) deciding whether to review the Executive Director's decision; and
  - (b) if it decides to do so, either affirming, reversing, or amending the decision.
- (6) In reviewing the Executive Director's decision, the Commission shall base its review on whether the Executive Director had a rational basis for the decision, and shall only reverse or amend a decision to the extent that a rational basis is lacking.